MALAYAN AGRICULTURAL PRODUCERS ASSOCIATION

v.

NATIONAL UNION OF PLANTATION WORKERS

SUPREME COURT, KUALA LUMPUR
HARUN HASHIM SCJ
MOHD. YUSOFF MOHAMED SCJ
ANUAR ZAINAL ABIDIN J
[CIVIL APPEAL NO. 02-175-91]
21 MAY 1992

LABOUR LAW: *Industrial Relations Act 1967 - Collective agreement entered into between appellant and respondent presented to Industrial Court for consent award - Industrial Court recorded consent award - Issue on minimum number of day's work in each month - Minister referred question under s. 33(1) of the Industrial Relations Act 1967 to Industrial Court for interpretation - Whether Industrial Court has jurisdiction to hear the reference.*

This was an appeal by MAPA against the decision of the High Court which granted leave to the respondent to issue a writ of *certiorari* to quash the ruling of the Industrial Court which held that it had jurisdiction to hear the reference of the Minister of Labour under s. 33(1) of the Industrial Relations Act 1967. The reference was for interpretation in respect of Article 8 of the Award No. 92/90 which deals with the minimum number of day's work in each month. Having granted the leave to the respondent on 26 October 1990, the High Court heard the motion and allowed the application on 27 March 1991 and quashed the award of the Industrial Court in respect of the reference by the Minister.

Held:

[1] The reference made under s. 33(1) of the Industrial Relations Act 1967 has to be precise so that on its face, the Industrial Court will know exactly the question it has to answer.

[2] In this case, the question referred to is too general and far from being specific and did not disclose what the real problem was.

[3] The appellate Court agreed with the learned Judge that the Industrial Court had no jurisdiction to answer the questions put forward by MAPA because the reference was made by the Minister.

[Appeal dismissed with costs. Deposit to respondent to account of taxed costs.]

[**Bahasa Malaysia** of Translation of Headnote]

UNDANG-UNDANG BURUH: *Akta Perhubungan Perusahaan 1967 - Perjanjian kolektif di antara perayu dan responden yang diserahkan kepada Mahkamah Perusahaan untuk award persetujuan - Mahkamah Perusahaan merakamkan award persetujuan - Isu mengenai hari-hari bekerja minima bagi setiap bulan - Menteri merujuk kepada persoalan dibawah s. 33(1) Akta Perhubungan Perusahaan 1967 kepada Mahkamah Perusahaan untuk tafsiran - Samada Mahkamah Perusahaan ada bidangkuasa untuk mendengar rujukan tersebut.*

Ini adalah rayuan oleh MAPA terhadap keputusan Mahkamah Tinggi yang telah memberi kebenaran kepada responden untuk mengeluarkan writ *certiorari* untuk membatalkan keputusan Mahkamah Perusahaan yang telah memutuskan yang ia mempunyai bidangkuasa untuk mendengar rujukan Menteri Buruh dibawah s. 33(1) Akta Perhubungan Perusahaan 1967. Rujukan tersebut adalah untuk tafsiran Artikel 8 Award No. 92/90 yang berkait dengan hari-

hari bekerja minima bagi setiap bulan. Selepas memberi kebenaran kepada Responden pada 26 Oktober 1990, Mahkamah Tinggi telah mendengar usul dan membenarkan Award Mahkamah Perusahaan bersangkutan dengan rujukan oleh menteri.

Diputuskan:

[1] Rujukan yang dibuat dibawah s. 33(1) Akta Perhubungan Perusahaan [1967] hendaklah ringkas supaya Mahkamah Perusahaan dapat mengetahui dengan tepat persoalan yang harus dijawabnya.

[2] Didalam kes ini, persoalan yang dirujukkan adalah terlalu umum dan jauh dari spesifik dan tidak menyatakan apakah masalah sebenarnya.

[3] Mahkamah rayuan bersetuju dengan Hakim yang bijaksana yang Mahkamah Perusahaan tidak mempunyai bidangkuasa untuk menjawab persoalan yang telah dikemukakan oleh MAPA disebab rujukan yang dibuat oleh Menteri berkenaan.

[Rayuan ditolak dengan kos. Deposit kepada responden hendaklah mengambil kira kos yang telah ditafsirkan.]

Case referred to:

Malayan Agricultural Producers Association v. National Union of Plantation Workers [1990] 1 ILR 302

Legislation referred to:

Employment Act 1955, s. 16
Industrial Relations Act 1967, ss. 17, 26, 30(7), 33(1), (3), 33(5), 56(1)

For the appellant - V.T. Nathan (Peh Lee Kheng with him); M/s. Shearn Delamore & Co.
For the respondent - B. Lobo; M/s. Lobo & Associates

[Ed. Note: The decision of the High Court was reported in [1992] 1 CLJ (Rep) 509.]

JUDGMENT

Harun Hashim SCJ:

On 6 April 1990 the Malayan Agricultural Producers Association (MAPA) and the National Union of Plantation Workers (NUPW) entered into a collective agreement for a period of three years effective from 1 May 1990 to 30 April 1993. On 14 April 1990 both parties presented the collective agreement to the Industrial Court with a request for a consent award. The Industrial Court acceded to the request and recorded a consent award as Award No. 92/90.

On 23 May 1990, the Minister, acting under s. 33(1) of the Industrial Relations Act 1967, referred the following question to the Industrial Court for interpretation:

> Tafsiran Artikel 8 dalam Keputusan Mahkamah Perusahaan No. 92/90 yang bertajuk - Minumum Number of Days' Work in Each Month.

Article 8 of the Award provides:

> Minimum Number of Days' Work in Each Month. The provisions of s. 16 of the Employment Act 1955 shall apply to employees covered by the said section.

Section 16 of the Employment Act 1955 reads:

> (1) Where an employee is employed in any agricultural undertaking on an estate on a contract of service under which he earns wages calculated by reference to the number of days' work performed in each month of his service, his employer shall be bound either to provide him with

work suitable to his capacity on not less than twenty-four days in each month during the whole of which he is so employed, or if the employer is unable or fails to provide work on twenty-four days in each month whereon the employee is willing and fit to work, the employer shall nevertheless be bound to pay to the employee in respect of each of such days wages at the same rate as if such employee had performed a day's work:

Provided that any dispute as to whether an employee was willing or fit to work shall be referred to the Director General for his decision:

Provided further that in computing twenty-four days for the purposes of this subsection account shall not be taken of more than six days in any week.

(2) A contract of service shall be deemed to be broken by an employer if he fails to provide work or pay wages in accordance with subsection (1).

At the hearing before the Industrial Court, NUPW raised a preliminary objection on the ground that the Industrial Court had no jurisdiction to hear the reference for the following reasons:

(a) The union states that the purported reference letter dated 24 May 1990 by the Y.B. Minister of Human Resources (the Reference) is void for uncertainty and or is *ultra vires* the provisions of s. 33(1) of the Industrial Relations Act 1967 (the Act) and therefore this Court is not seized with jurisdiction to hear the case.

(b) The union states that MAPA had associated itself with this contention of the NUPW on 3 June 1990 in Court. A copy of a *New Straits Times Press* report on the matter is annexed hereto marked "NUPW1".

Further or in the alternative, the union avers and will contend at the hearing that this Honourable Court ought not to hear the said reference on its merits or otherwise because to do so will be to usurp the statutory duties of the Director General of Labour and or eventually the jurisdiction of the High Court and the Supreme Court by virtue of:

(a) the provisions of Article 8 of the said Award 92 of 1990 which is the subject matter of the said reference; and or

(b) the provisions of the Employment Act 1955 which provides the remedy therein to an aggrieved employee for breach or otherwise of any provision thereof.

The Industrial Court on 15 October 1990 dismissed the preliminary objection and directed NUPW to file its statement in reply to MAPA's statement of case.

On 26 October 1990 NUPW applied to the High Court for leave to issue a writ of *certiorari* to quash the said ruling of the Industrial Court. The leave was granted and the motion proper was heard on 27 March 1991 wherein the learned Judge allowed the application and quashed the Award of the Industrial Court. Hence this appeal.

Section 33 of the Industrial Relations Act 1967 provides:

(1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.

(2) The Court may, upon the application of any party, by order vary any of the terms of an award, if it considers it desirable so to do for the purpose solely of removing ambiguity or uncertainty.

(3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.

(4) The decision of the Court shall be binding in the same manner as the original award or agreement.

(5) The expression "Court" for the purpose of this section, means the Court by which the award was made or any other Court specially constituted under s. 22 for the purpose.

The essence of s. 33(1) is **the question** which the Minister is referring or the party making the application is asking the Industrial Court to interpret.

In the instant case the question referred to the Court is:

> What is the interpretation of Article 8 of the Award.

The short answer to that question is that the provisions of s. 16 of the Employment Act 1955 applies with regard to the minimum number of days of work in each month in respect of employees bound by the Award covered by that section.

It seems to us that the answer to the question is so obvious that it cannot be the question the Minister wants an answer. The question is too general and far from being specific. It does not disclose what the real problem is. We are of the view that the Minister in referring any question which arises as to the interpretation of any award or collective agreement to the Industrial Court under s. 33(1) should set out the matters under contention between the parties and the questions desired to be answered in respect of such contention.

A cursory look at s. 16 of the Employment Act shows that several questions can arise under that section. We think it will be a great imposition on the Industrial Court to expect it to visualise the many possibilities. The Industrial Court recognised the difficulty when it said in para. 7 of the Award:

> Indeed, the Minister should frame the reference carefully and the question which is intended to be tried by the Industrial Court should be so worded as to leave no scope for ambiguity or controversy.

In the instant case, MAPA in its statement of case in the Industrial Court set out the various issues between it and NUPW arising out of Article 8 of the collective agreement and its interpretation of s. 16 of the Employment Act with a preamble that Article 8 itself is inadequately worded.

The Industrial Court in its Award said that with the Minister's reference it was seized with jurisdiction and however inaccurate the question might be it is duty bound to exercise its jurisdiction. It was at liberty to find out what the real issues are. It would appear that the Industrial Court in stating this, was prepared to decide on issues placed before it on the material put forward by MAPA in its statement of case coupled with the reference of the Minister which stated that there was a dispute between MAPA and NUPW with regard to the interpretation of Article 8. On its face, it is not known whether these are the questions, the Minister wants answered. In the High Court, the learned Judge held that the Industrial Court had no jurisdiction to answer the questions put forward by MAPA because the reference was made by the Minister. We agree.

Under s. 33(1), MAPA being a party to the Award, is at liberty to apply to the Industrial Court directly for an interpretation of Article 8. If it had done so, then it would have been proper for the Industrial Court to answer the questions set out in MAPA's statement of case.

A reference by the Minister under s. 33(1) is different from say, a reference of a trade dispute under s. 26 where the Minister need only identify the parties to the dispute and state a dispute exists between them with regard to the conclusion of a collective agreement, or the dismissal of certain employees, without going into details. In such cases, the Industrial Court is granted very wide powers to determine the real dispute between the parties and may even include matters not specifically claimed by the parties: s. 30(7). A s. 33(1) reference on the other hand has to be precise so that on its face, the Industrial Court will know exactly the question it has to answer. The facts which give rise to the question have to be stated but must not be disputed. In the process of answering the question, the Industrial Court will have the benefit of hearing the respective views of the parties bound by the award or collective agreement: s. 33(3). The Industrial Court should decline to exercise jurisdiction under this section if it is made to determine disputed questions of fact, so as to ensure that trade disputes are not short-circuited to it in the guise of interpretation questions.

Turning now to the alternative objection of NUPW, we find that this argument is without merit. The Director General of Labour does not have exclusive jurisdiction to interpret s. 16 of the Employment Act 1955. In collective agreement or awards, it is quite common to find, as here, reference being made to provisions of the Employment Act for the sake of brevity, convenience or consistency. When this occurs, the Industrial Court has the power to interpret the relevant provisions of the Employment Act as it applies to the particular collective agreement or award. Thus, if the question is whether rubber tappers bound by the Award in this case are covered by Article 8, the Industrial Court has the power to interprete s. 16 of the Employment Act in the context of the Award.

Indeed in an interpretation case under s. 33(1) or non-compliance case under s. 56(1), the Industrial Court cannot discharge its functions if it is prevented from interpreting relevant laws which have been incorporated as terms in an award or collective agreement. In the present case therefore, if a specific question has been framed in the form we have suggested, the Industrial Court in interpretation of Article 8 of the Award must also interpret s. 16 of the Employment Act to give effect to Article 8 and the Award as a whole.

Before parting with the case, we observe that Award No. 92/90 was in fact a collective agreement but instead of depositing it with the Industrial Court under s. 16 for cognizance so that it will have the effect of an award under s. 17, it was presented to the Industrial Court for a consent award which makes it an award under s. 30. We are of the view, the Industrial Court in this instance will have an initial difficulty in hearing a case under s. 33(1) because there is a difference in the interpretation of a collective agreement and the interpretation of an award. And the difference is this: the interpretation of a collective agreement is an attempt to ascertain the **intention of the parties** whereas the interpretation of an award involves ascertaining the **intention of the Court**. And if it is an award, the interpretation placed on the award by the parties is irrelevant because only the Court can pronounce its own intention. Who then is the author of Article 8?

For the reasons stated we dismissed the appeal with costs. Deposit to the respondent to account of taxed costs.

Also found at [1992] 3 CLJ 1336